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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202942
Party	Defendant Koelzer LLC
Correspondence Address	LOLA M. SWABY SWABY LAW FIRM, P.L. 8668 NAVARRE PKWY # 161 NAVARRE, FL 32566-2185  Lswaby@swabylaw.com
Submission	Answer
Filer's Name	Lola M. Swaby, Esq.
Filer's e-mail	Lswaby@swabylaw.com
Signature	/Lola M. Swbaby/
Date	01/20/2012
Attachments	koelzer Answer to Notice of Opposition_91202942.pdf ( 5 pages )(63409 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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**ACT II JEWELRY, LLC d/b/a Lia Sophia,**

**Opposer,**

**Opposition No.: 91202942**

v.

**Serial No.: 85229338**

**KOELZER, LLC d/b/a Lia Maria,**

**Mark: LIA MARIA**

**Applicant.**

\_\_\_\_\_/

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

The following is the **Answer of Koelzer LLC** (hereinafter “**Applicant**”), owner of Federal Trademark Application Serial No. 85229338 for the mark “LIA MARIA” depicted in the caption above, by and through the undersigned counsel, Swaby Law Firm, P.L., to the Notice of Opposition filed on December 12, 2011 by **Act II Jewelry, LLC d/b/a Lia Sophia** (hereinafter “**Opposer**”), and assigned Opposition No. 91202942.

Applicant hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Notice of Opposition, as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice of Opposition; therefore, the allegations are **Denied**.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Notice of Opposition; therefore, the allegations are **Denied**.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition; therefore, the allegations are **Denied**.

4. **Admitted in part, Denied in part.** Admitted that Applicant purposes to use the mark “LIA MARIA” in connection with jewelry products; Denied as to all other allegations.

5. **Admitted in part, Denied in part.** Admitted that one of the phrase in Applicant’s mark, *i.e.*, *LIA*, is similar in pronouncement to one of the phrase in Opposer’s mark; Denied as to all other allegations.

6. **Denied.**

7. **Denied.**

8. **Denied, and demand strict proof thereof.** Applicant is also without knowledge or information relating to any individual by the name of Hoelzer. To the extent Opposer meant to reference Applicant’s owners individually, all allegations are Denied and strict proof thereof is demanded for all such allegations.

In addition, Applicant set-forth the foregoing “Affirmative Defenses” and statements in support of its position:

9. The phrase “LIA” is not descriptive of Applicant’s goods.

10. The phrase “MARIA” is not descriptive of Applicant’s goods.

11. The phrase “LIA MARIA” as a whole is not descriptive of Applicant’s goods.

12. The mark in Applicant’s Application, Serial No. 85220338, as a whole is not descriptive of Applicant’s goods.

13. Applicant was not required to disclaim the phrases “LIA” or “MARIA” in its pending Application Serial No. 85220338.

14. Upon information and belief, there are numerous users and registrations of third party marks with the phrases “LIA” and/or “SOPHIA”.

15. Trademarks registered on the Principal Register of the United States Patent and Trademark Office which contain the phrase “LIA” OR “SOPHIA” for goods within “class 14 jewelry”, without any disclaimer or claim of acquired distinctiveness regarding those terms include the forgoing marks:

Registration No.	Mark	Image	Goods/ Services	Register	Additional Information
3701684	Sophia Jaxon Creations	Sophia Jaxon Creations	Jewelry (Class 14)	Principal	<b>Disclaimer:</b> NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CREATIONS" APART FROM THE MARK AS SHOWN
2905939	Bella Lia		Jewelry (Class 14)	Principal	<b>Disclaimer:</b> THE TERM “BELLA LIA” DOES NOT IDENTIFY PARTICULAR LIVING INDIVIDUAL
3980617	Sophia by Design	SOPHIA BY DESIGN	Jewelry (Class 14)	Principal	<b>Disclaimer:</b> NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DESIGN" APART FROM THE MARK AS SHOWN
3020302	Sophia Fiori	SOPHIA FIORI	Jewelry (Class 14)	Principal	<b>Disclaimer:</b> THE TERM “SOPHIA FIORI” DOES NOT IDENTIFY PARTICULAR LIVING INDIVIDUAL
3881318	Sophia Rose	SOPHIA ROSE	Jewelry (Class 14)	Principal	<b>Disclaimer:</b> THE NAMES, PROTRAITS AND/OR SIGNATURES SHOWN IN THE MARK IDENTIFIES A PARTICULAR LIVING INDIVIDUAL, WHOSE CONSENT TO REGISTER IS MADE OF RECORD

16. Upon information and belief, Opposer’s mark is not famous.

17. Upon information and belief, users of Applicant’s goods are sophisticated purchasers.

18. Upon information and belief, users of Opposer’s goods are sophisticated purchasers.

19. Upon information and belief, ordinary prospective purchasers of Applicant’s goods do not associate Applicant’s and Opposer’s mark.

20. Applicant’s design mark and Opposer’s mark are different in spelling.

21. Applicant’s design mark and Opposer’s mark have very different commercial impressions.

22. Applicant's design mark and Opposer's mark are not likely to cause confusion, mistake or deception to purchasers as to the source of Opposer's goods.
23. Applicant's mark does not and cannot dilute Opposer's mark.
24. Applicant's mark does not falsely suggest a connection to Opposer's mark.
25. Applicant does not intend any association with Opposer's mark(s).
26. Opposer's claims are barred by the doctrine of unclean hands or other applicable equitable principles.
27. Opposer has failed to adequately maintain, police or enforce any mark or proprietary rights it may have in its alleged marks.

**WHEREFORE**, Applicant prays that the Trademark Trial and Appeal Board deny the Opposition and permit registration of Applicant's proposed mark in Application Serial Number 85229338 in the United States Patent and Trademark Office.

A duplicate copy of this Answer to Notice of Opposition has been sent via First Class Mail to Counsel for Opposer on January 20, 2012,

Respectfully Submitted,

SWABY LAW FIRM, P.L.

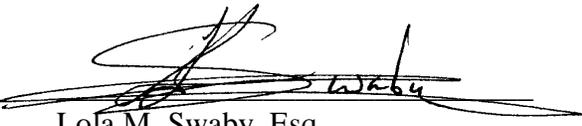
By:



LOLA M. SWABY, ESQ.  
8668 Navarre Parkway, No. 161  
Navarre, Florida 32566  
ATTORNEY FOR APPLICANT  
KOELZER LLC d/b/a LIA MARIA

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certify that a true and complete copy of the foregoing Applicant's Answer to Notice of Opposition has been served on opposing counsel by mailing a copy to Opposer's Counsel of Record at: *Milton Springut, Esq., Kalow & Springut LLP, 488 Madison Avenue, New York, NY 10022* via U.S. First Class Mail on January 20, 2012.

  
Lola M. Swaby, Esq.